

This letter discusses the various tax liabilities for sales of prepaid landline phone cards, prepaid landline rechargeable minute cards, prepaid cellular phone cards, prepaid cellular chargeable minute cards, prepaid music download cards, prepaid game download cards, prepaid wireless ring tone download cards, prepaid internet access cards, and propane for home use or cooking. See 86 Ill. Adm. Code 495.100(c). (This is a GIL.)

September 19, 2006

Dear Xxxxx:

This letter is in response to your letter dated April 28, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Several of our clients are currently engaged in retail operations throughout the state of Illinois. Upon reviewing applicable Laws, Regulations, and Publications, I have found the information to be conflicting and vague, or I have not found any information regarding the taxability of: prepaid landline phone cards and rechargeable minutes, prepaid cellular phone cards and rechargeable minutes, prepaid music download cards, prepaid game download cards, prepaid ring tone download cards, prepaid internet access cards, and propane tanks for home heating and cooking.

Prepaid landline phone cards and rechargeable minute cards allow the consumer to make local, long distance or international calls from a landline phone. After purchasing the card, the consumer dials a toll free number listed on the card, enters a PIN number also listed on the card, and then enters the area code and number they wish to call. After the initial purchase, the aforementioned card may be recharged at the retail location, or another prepaid card may be purchased.

Prepaid cellular phone cards and rechargeable minute cards may be purchased at retail stores nationwide. For example, the initial purchase of a 'PHONE' includes a wireless phone, battery, charger, sixty days of active wireless service, and ten minutes of starter airtime. The consumer would then need to purchase additional airtime minutes, made

available through prepaid cards which also contain a special PIN number. After the initial purchase, the aforementioned card may be recharged at the retail location, or another prepaid card may be purchased. I am specifically concerned with the taxability of: the initial purchase of a prepaid debit cards [sic] for wireless airtime minutes and the recharge of prepaid debit card for wireless airtime minutes.

Music download cards, game download cards, and ring tone download cards may also be purchased at retail stores nationwide. These cards are activated upon purchase, and contain a PIN number for accessing content. For example, a prepaid 'Napster' subscription card may be purchased for one month, three months, or one year. The Napster subscription allows the consumer to download and listen to music on a personal computer for the allotted time. Napster also sells a prepaid card that allows the consumer to purchase a card for \$14.95 and download 15 songs on a personal computer. Free Napster software must be initially downloaded to a computer and the consumer enters the PIN from the prepaid card to access their account. As songs are downloaded a certain dollar amount is deducted from the prepaid card. Prepaid music download cards may also be purchased to download music to a cellular phone.

Prepaid game download cards allow the consumer to access games via their computer or cellular phone. Cards may be purchased to access the games for a certain period of time, usually one or three months, or the card will enable a consumer to download a game to their personal computer or cellular phone. These cards are activated upon purchase, and contain simple instructions and a unique PIN for accessing content.

Prepaid ring tone cards allow the consumer to download a ring tone directly to their cellular phone. These cards are also activated upon purchase, and contain simple instructions and a unique PIN for accessing content. Consumers call a toll-free number from the cell phone, enter the PIN, and select the content they wish to download.

Prepaid internet access cards allow consumers to log into the internet for a set amount of time from any computer. These cards come with a local phone number to call, a username printed on the card, and a password which is revealed by scratching the card. Once the above parameters are entered onto the computer a consumer will have access to the internet.

Propane for home heating or cooking may be purchased multiple ways. A brand new pre-filled tank may be purchased from a retailer, or a consumer may bring an empty tank to a retailer to have it refilled, or a consumer may bring an empty tank and exchange that tank for a new filled tank. I am concerned with the taxability in each of the three above situations.

In an effort to ensure that our clients are in full compliance with Illinois's [sic] sales and use tax laws, I hereby respectfully request a ruling on the proper taxability of the following types of products being sold, by our clients, at retail:

1. Prepaid landline phone cards
2. Prepaid landline rechargeable minute cards
3. Prepaid cellular phone cards
4. Prepaid cellular rechargeable minute cards
5. Prepaid music download cards
6. Prepaid game download cards
7. Prepaid wireless ring tone download cards

8. Prepaid internet access cards
9. Propane for home use or cooking (Pre-filled propane tank purchase, propane refill of tank, and propane tank exchange)

Thank you for your attention to this matter.

## DEPARTMENT'S RESPONSE

Prepaid landline phone cards: Effective January 1, 2001 prepaid telephone calling card arrangements became taxable as tangible personal property under the Retailers' Occupation Tax Act, Service Occupation Tax Act, Service Use Tax Act and Use Tax Act. See 35 ILCS 120/2.

Prepaid landline rechargeable minute cards: See prepaid landline phone cards.

Prepaid cellular phone cards: See prepaid landline phone cards.

Prepaid cellular rechargeable minute cards: See prepaid landline phone cards.

Prepaid music download cards, Prepaid game download cards, and Prepaid wireless ring tone download cards, Prepaid internet access cards: The Department is without sufficient information to determine the tax liabilities of these items. In order to make a determination of the tax liabilities, the Department would need specific information on how the music download cards, game download cards, wireless ring tone download cards, and internet access cards operate. However, we hope the following general information is helpful.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495.

"Telecommunications", in addition to the meaning ordinarily and popularly ascribed to it, includes, without limitation, messages or information transmitted through use of local, toll and wide area telephone service; private line services; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two way radio; paging service; or any other form of mobile and portable one-way or two way communications; or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber-optics, laser, microwave, radio, satellite or similar facilities. See 35 ILCS 630/2(c).

"Telecommunications" does not include "charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content" or "value-added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission." See 35 ILCS 630/2(a) and 2(c). If telecommunications retailers provide both such services and also transmission services, the charges for each must be disaggregated and separately stated from telecommunications charges in the books and records of the retailers. If these charges are not thus disaggregated, the entire charge is taxable as a sale of telecommunications.

Information regarding the taxation of computer software may be found under the Department's regulations at 86 Ill. Adm. Code 130.1935. Canned software is considered to be tangible personal property regardless of the form in which it is transferred or transmitted, including tape, disc, card, electronic means or other media.

Propane for home use or cooking: When a retailer sells a brand new pre-filled tank of propane or a refilled tank, the sale is subject to Retailers' Occupation Tax on the selling price of the filled tank. Likewise, when a purchaser brings in an empty tank and asks the vendor to refill the tank, the sale is subject to Retailers' Occupation Tax on the selling price of the filled tank.

Sales of propane for home use or cooking are not subject to the Motor Fuel Tax.

If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

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Associate Counsel

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